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राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 31 दिसम्बर, 1977/10 पौष, 1899

GOVERNMENT OF HIMACHAL PRADESH

VIDHAN SABHA SECRETARIAT

NOTIFICATION

Simla-171004, the 27th December, 1977

No. 1-73/77-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973,

2222-गजट-31-12-77—980.

(1251)

मूल्य 20 पैसे ।

the Himachal Pradesh Panchayati Raj (Amendment) Bill, 1977 (Bill No. 30 of 1977) after having been introduced in the Assembly on the 27th December, 1977, is hereby published in the Gazette.

V. P. BHATNAGAR,
Secretary.

**THE HIMACHAL PRADESH PANCHAYATI RAJ
(AMENDMENT) BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977.

Short title
and com-
mencement.

(2) This section shall come into force at once; the remaining provisions of this Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint in this behalf and different dates may be appointed for the different provisions of this Act.

2. In sub section (1) of section 3 of the Himachal Pradesh Panchayati Raj Act, 1968 (hereinafter called "the principal Act"), the following amendments shall be made, namely:—

Amendment
of section 3.

- (a) in clause (f) for the words and figures, "Nyaya Panchayat" and "circle" means the area within which a Nyaya Panchayat exercises jurisdiction under section 194 of this Act," the words "Gram Panchayat" shall be substituted;
- (b) in clause (g) for the sign ",", wherever it occurs in between the words "Gram Sabha" and "Gram Panchayat" shall be substituted with the word "or" and the words "or Nyaya Panchayat" shall be omitted;
- (c) in clause (l), the words and figures "and Nyaya Panchayat means a Nyaya Panchayat established under section 194 of this Act" shall be deleted;
- (d) in clause (q), the words and sign "Nyaya Panchayat," shall be omitted;
- (e) in clause (s), the words "and "Nyaya Panch" means a member of Nyaya Panchayat elected or appointed under this Act and includes a Sarpanch or Naib-Sarpanch" shall be omitted;
- (f) in clause (dd), the words "Nyaya Panchayat" shall be substituted by the words "Gram Panchayat";
- (g) in clause (hh), the words and figures "section 4 of the Code of Criminal Procedure, 1898" shall be substituted by the words and figures "section 2 of the Code of Criminal Procedure, 1973"; and

- (h) in clause (jj) the words, signs and figures, "the Punjab Land Revenue Act, 1887, as inforce in the transferred territory or, as the case may be," shall be omitted.

Amendment
of section 9.

3. In section 9 of the principal Act, the following amendments shall be made, namely:—

- (a) for sub-section (1), the following sub-section (1) shall be substituted, namely:—

"9.(1) Every Gram Sabha shall, in the prescribed manner, elect from amongst its members, a Pradhan and Up-Pradhan of the Sabha who shall also be called the Pradhan and Up-Pradhan of the Gram Panchayat and shall also elect from amongst its members an Executive Committee called the Gram Panchayat consisting of such number of persons not being less than seven or more than eleven, including the Pradhan and Up-Pradhan, as the Government may determine :

Provided that if one or more members cannot be so elected, even after all necessary steps in the prescribed manner have been taken in that direction, the Government may appoint the necessary number of duly qualified persons as members of the Gram Panchayat and the members so appointed shall hold office for a term co-terminus with the term of the elected members :

Provided further that if no woman is elected as a Panch of any Gram Panchayat, the Gram Panchayat shall co-opt as such Panch, one woman member of the Sabha who is qualified to be elected as Panch, in the prescribed manner where the number of total members of the Gram Panchayats does not exceed nine. Where the number of total members of the Gram Panchayat exceeds nine, two women shall be co-opted as Panches of the Gram Panchayat:

Provided further that one seat shall be reserved in every Gram Panchayat for scheduled caste member who shall be elected in the prescribed manner. In a Gram Panchayat, where the number of total members is eleven, one member belonging to scheduled castes shall be co-opted by the Gram Panchayat, if only one scheduled castes member is elected.";

- (b) sub-section (2) shall be omitted; and

- (c) in sub-section (5) of section 9, the following amendments shall be made, namely :—

(i) in clause (e), the figures "1898" shall be substituted with the figures "1973";

(ii) after the sign";" occurring at the end of clause (m), the word "or" shall be added and thereafter the following clause (n) shall be added, namely: —

“(n) has been convicted of an offence punishable under the Protection of Civil Rights Act, 1955 unless a period of six years has elapsed since his conviction;”.

4. In section 10 of the principal Act, the following amendments shall be made, namely:—

Amendment
of section
10.

(a) in sub-section (2), the sign“.” occurring at the end of existing proviso shall be substituted with the sign“:” and thereafter the following second proviso shall be added:—

“Provided further that the Government may, for holding the elections to the Gram Panchayats simultaneously throughout the State, order, by notification in the Official Gazette, general elections to the Gram Panchayats before the expiry of their prescribed term.”.

(b) sub-section (3), shall be substituted by the following sub-section (3), namely:—

“(3) The Gram Sabha may remove the Pradhan or up-Pradhan from his office by a majority of two-thirds of the members of Gram Sabha present and voting at its general meeting:

Provided that such vote of non-confidence is not sponsored within one year from the date of his or her election to such office and provided further that no next vote of non-confidence shall be moved within an interval of one year of the previous non-confidence motion.”.

5. Sub-section (3) of section 49 of the principal Act shall be omitted.

Amendment
of section
49.

6. In section 63 of the principal Act, the following amendments shall be made, namely:—

Amendment
of section
63.

(1) for the existing clause (a) the following clause (a) shall be substituted:

“(a) primary members to be elected by secret ballot in the manner prescribed, by the persons as provided hereunder:—

(i) twenty members from the block, by the Panches, Up-Pradhans and Pradhans of Gram Panchayats in the block from amongst themselves;

(ii) two members representing the co-operative societies within the jurisdiction of the Panchayat Samiti, in the manner prescribed, by the members of such societies from amongst themselves;” and

(2) Sub-clause (iii) of clause (b) shall be omitted.

7. For the sign “.” occurring at the end of the existing proviso to section 66 of the principal Act, the sign“:” shall be substituted and thereafter the following second proviso shall be added:—

Amendment
of section
66.

“Provided further that the Government may, to give representation to the Gram Panchayats elected after the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977, may, by notification in the Official Gazette, order, general elections to the Panchayat Samitis before the expiry of their prescribed term”.

Amendment
of section
73.

8. In sub-section (1) of section 73 of the principal Act, the sign“.” occurring at the end of clause (b) shall be substituted by the sign and word “, or” and thereafter the following clause (c) shall be added, namely:—

“(c) if he ceases to be a Panch”.

Amendment
of section
75.

9. In section 75 of the Principal Act, the following amendments shall be made, namely:—

(a) at the end of sub-section (1), but before the first proviso, the following proviso shall be inserted:—

“Provided that if the Government, under section 66, order general elections to Panchayat Samitis before the expiry of their prescribed term, the Chairman or Vice-Chairman shall also cease to hold office;” and

(b) in the existing first proviso the word “further” shall be inserted in between the words “Provided” and “that”.

Amendment
of section
135.

10. In sub-section (2) of section 135 of the principal Act, the words “Zila Parishad”, “it” and “its”, shall be substituted for the words “Deputy Commissioner,” “he” and “his” respectively, wherever these occur therein.

Amendment
of section
139.

11. In section 139 of the principal Act, the following sub-sections (4) and (5) shall be added, namely:—

“(4) Every Zila Parishad shall, by the name of the district for which it is constituted, be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall by the said name sue or be sued.

(5) No person shall be eligible for co-option under this section if he is not qualified to be co-opted under section 64.”.

Amendment
of section
142.

12. For the sign “.” occurring at the end of second proviso to sub-section (1) of section 142 of the principal Act, the sign“:” shall be substituted and thereafter the following third proviso shall be added, namely:—

“Provided further that the Government may, to give representation to the Panchayat Samitis elected after the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977, may, by notification in the Official Gazette, order general elections to the Zila Parishads, before the expiry of the prescribed term.”

Substitution
of section
146.

13. For section 146 of the principal Act, the following section shall be substituted, namely:—

- “146. (1) A Zila Parishad shall advise, supervise and co-ordinate the functions of Panchayat Samitis in the district.
- (2) Without prejudice to the generality of the provisions of sub-section (1), a Zila Parishad shall have power to:—
- (a) examine and approve the budget of Panchayat Samitis in the manner laid down in section 135;
 - (b) issue directives to Panchayat Samitis with respect to the efficient performance of their duties. Such directives shall be binding on the Panchayat Samitis; provided that if any Panchayat Samiti does not accept any such directive, it may return the same with its comments to the Zila Parishad with a resolution passed by a two-thirds majority of its members. The Zila Parishad shall thereupon consider the aforesaid comments of the Panchayat Samiti and shall pass orders in regard thereto which shall be final;
 - (c) give advice to Panchayat Samitis on its own motion or on the requirement of the Government or at the request of a Panchayat Samiti;
 - (d) co-ordinate and consolidate development plans prepared in respect of Panchayat Samitis;
 - (e) secure the execution of plans, projects, schemes or other works common to two or more Panchayat Samitis or blocks in the district;
 - (f) exercise and perform such other powers and functions in relation to any development programme as the Government may, by notification, confer on or entrust to it;
 - (g) advise Government on all matters relating to development activities and maintenance of services in the district, whether undertaken by local authorities or Government;
 - (h) advise Government on the allocation of work among Panchayats and Panchayat Samitis and co-ordinate their work; and
 - (i) advise Government on matters concerning the implementation of any statutory or executive order specially referred by the Government to the Zila Parishad.
- (3) The Zila Parishad may, with the prior approval of the Government, levy contributions from the funds of the Panchayat Samitis in the district.
- (4) A Zila Parishad shall have the authority to call for any information, statement or record from a Panchayat Samiti which shall comply with any such requisition within a reasonable time.
- (5) Notwithstanding anything to the contrary in this Act, a Zila Parishad shall, when required by the Government to do so, by an order in writing, exercise such supervision and control over the performance of all or any of the administrative functions of the Gram Panchayats within the district or any part thereof, as may be specified in the said order”.

14. After section 147 of the principal Act, the following sections 147-A, 147-B and 147-C alongwith their headings shall be added, namely:—

Insertion of
section 147-
A, 147-B,
and 147-C.

“147-A. *Zila Parishad fund.*—(1) All moneys received by the Zila Parishad shall constitute a fund called the Zila Parishad fund and shall be applied for the purpose specified in this Act and for such other purposes and in such manner as may be prescribed.

- (2) All moneys received by the Zila Parishad shall be kept in a Government treasury or sub-treasury or in the Bank to which the Government treasury business has been made over unless the Government in any case otherwise permits.
- (3) All orders or cheques against the Zila Parishad fund shall be signed by the secretary.

147-B. *Income and expenses of Zila Parishad.*—(1) The sources of income of a Zila Parishad shall consist of:—

- (i) the Central or State Government funds allotted to the Zila Parishad;
 - (ii) grants from All India bodies and institutions for the development of cottage, village and small-scale industries, and the like;
 - (iii) such share of the land cess, State taxes or fees as may be prescribed;
 - (iv) income from endowments or trusts administered by the Zila Parishad;
 - (v) donations and contributions from the Panchayat Samitis or from the public in any form; and
 - (vi) such contributions as the Zila Parishad may levy from the Panchayat Samitis with the previous approval of the Government.
- (2) The expenses of the Zila Parishad shall include the salaries and allowances of the servants of the Zila Parishad, the allowances, if any, to be paid to the members of the Zila Parishad or any standing or consultative committee thereof, any item of expenditure directed by the Government for carrying out the purposes of this Act and such other expenses as may be necessary for such purposes.

147-C. *Budget of Zila Parishad.*—The secretary of a Zila Parishad shall, in each year, frame and place before the Zila Parishad, on or before the prescribed date, a budget showing the probable receipts and expenditure during the next financial year.”

Substitution
of section
149.

15. For section 149 of the principal Act, the following section shall be substituted, namely:—

“149. The provisions of sections 73, 75, 87, 90, 91, 92, 93, 94, 97, 114 and 115 shall, as far as may be, apply to a Zila Parishad or the Chairman, Vice-Chairman, members and servants thereof in the same manner and to the same extent as they apply to a Panchayat Samiti or Chairman, Vice-Chairman, the members and servants thereof:

Provided that the Government servants placed at the disposal of a Zila Parishad under sub-section (1) of section 92, as applied by this section, shall be under the administrative control of the Deputy Commissioner.”

16. In section 151 of the principal Act, the following amendments shall be made, namely:—

Amendment
of section
151.

- (a) in sub-section (1) after the words "Panchayat Samiti" wherever these occur, the words "or Zila Parishad" shall be inserted; and
- (b) in sub-section (2) after the words "Panchayat Samiti" the words "and Zila Parishad" shall be inserted.

17. For section 155 of the principal Act, the following section 155 shall be substituted, namely:—

Substitution
of section
155.

"155. (1) When a Panchayat Samiti or Zila Parishad is superseded under section 154, the following consequences shall ensue—

- (a) all members of the Panchayat Samiti or Zila Parishad, as the case may be, shall, from the date of the notification, vacate their offices;
 - (b) all powers and duties of the Panchayat Samiti or Zila Parishad may, until the Panchayat Samiti or Zila Parishad is reconstituted, be exercised and performed by such person or persons as the Government may appoint in this behalf; and
 - (c) all property vested in the Panchayat Samiti or Zila Parishad shall, until it is reconstituted, vest in the Government.
- (2) When a Panchayat Samiti or Zila Parishad is superseded under section 154, the Government shall, as soon as may be, constitute another Panchayat Samiti or Zila Parishad in its place.
- (3) Any person or persons appointed under clause (b) of sub-section (1) shall be subject to the control of the Government and such other officers as it may direct, and shall be subject to all other restrictions, limitations and conditions imposed by this Act, on the Panchayat Samiti or Zila Parishad."

18. In sub-section (1) of section 157 of the principal Act, after the words "Panchayat Samiti" wherever these words occur, the words "or Zila Parishad" shall be inserted.

Amendment
of section
157.

19. In section 158 of the principal Act, the following amendments shall be made, namely:—

Amendment
of section
158.

- (a) in sub-section (1), after the words "Panchayat Samiti," occurring for the first time, the words "or Zila Parishad" shall be inserted and after the words "Panchayat Samiti" occurring for the second time, the words and signs "or Zila Parishad, as the case may be," shall be inserted;
- (b) in sub-section (2), in between the words "Samiti fund" and "to pay the expense" the words "or Zila Parishad fund" shall be inserted; and
- (c) after sub-section (2), the following new sub-section (3) shall be inserted—
 "(3) The Government may, by an order in writing, delegate its powers under sub-section (1) or sub-section (2) in so far as these relate to the Panchayat Samitis also to the Zila Parishad subject to such conditions, limitations and restrictions as may be specified in the order."

- Amendment of section 159.** **20.** After the words "Deputy Commissioner" and before the sign ":", occurring at the end of section 159 of the principal Act, the words "and if such dispute arises between a Panchayat Samiti and a Zila Parishad or between two Zila Parishads shall be decided by the Director" shall be substituted.
- Amendment of section 163.** **21.** In sub-section (3) of section 163 of the principal Act, the figure "249" shall be substituted with the figure "237".
- Substitution of section 164.** **22.** For section 164 of the principal Act, the following section 164 shall be substituted, namely:—
- "164. (1) A servant of a Panchayat Samiti or Zila Parishad or a Government servant placed at their disposal aggrieved by an order involving a penalty imposed on him by a Panchayat Samiti or Zila Parishad may, within the prescribed period, prefer an appeal,—
- (i) in the case of Panchayat Samiti, to the Deputy Commissioner;
- (ii) in the case of a Zila Parishad, to the Director.
- (2) Any order passed under sub-section (1) shall be subject to revision by,—
- (i) the Director, if the order has been passed by the Deputy Commissioner; and
- (ii) the Government, if the order has been passed by the Director."
- Amendment of section 174.** **23.** In section 174 of the principal Act, for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898" the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted.
- Amendment of section 192.** **24.** In section 192 of the principal Act, for the words "or Panchayat Samiti" the sign and the words, "Panchayat Samiti or Zila Parishad" shall be substituted.
- Substitution of Chapter XV.** **25.** For the existing Chapter XV along with its heading the following Chapter XV shall be substituted, namely:—

CHAPTER XV

JUDICIAL FUNCTIONS OF GRAM PANCHAYAT

194. *Bar for Panches to take part in certain cases.*—(1) No Panch shall take part in any case, suit or proceedings to which he or she or his or her near relation, employer or employee, or partner in business is a party or in which any of them is personally interested.

(2) If by reason of the number of Panches disqualified under sub-section (1) there remains no quorum, the Panchayat shall send the case or the suit to the District Magistrate or the District Judge or the Collector having jurisdiction, as the case may be, for disposal in accordance with law.

Explanation.—'near relation' means father, grand father, father-in-law, maternal or paternal uncle, son, grand son, son-in-law, brother, nephew,

brother-in-law, wife, sister, sister's husband, mother, daughter, mother-in-law, daughter-in-law and husband.

195. Territorial jurisdiction.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973, every case instituted under this Act shall be instituted before the Pradhan, or in his absence Up-Pradhan, of the Gram Panchayat of the Sabha area in which the offence was committed.

5 of 1908
8 of 1974

(2) Notwithstanding anything contained in the Civil Procedure Code, 1908, or in the Himachal Pradesh Tenancy and Land Reforms Act, 1972, every suit instituted under this Act shall be instituted before the Pradhan, or in his absence Up-Pradhan, of the Gram Panchayat of the Gram Sabha area in which the defendant, or any of the defendants, where they are more than one, ordinarily resides or carries on business at the time of the institution of the suit irrespective of the place where the cause of action arose.

6 of 1954

(3) Notwithstanding anything contained in the Himachal Pradesh Land Revenue Act, 1953, every proceeding specified under section 211 shall be transferred by the revenue court concerned to the Gram Panchayat within the local area in which the land concerned is situated and the Gram Panchayat shall decide such proceedings in the manner prescribed:

Provided that where land is included in the local area of more than one Gram Panchayat, the revenue court concerned shall transfer the proceedings to the Gram Panchayat within the area of which the greater part of the land is situated.

196. Offences cognizable by Gram Panchayat.—(1) Offences mentioned in Schedule II or declared by the State Government to be cognizable by a Gram Panchayat, if committed within the jurisdiction of a Gram Panchayat, and abetment of and attempts to commit such offences shall be cognizable by such Gram Panchayat.

2 of 1974

(2) Application for maintenance under section 125 of the Code of Criminal Procedure, 1973, shall be heard and decided by the Gram Panchayat. A Gram Panchayat may grant a maintenance allowance not exceeding one hundred rupees per month on such application without prejudice to any other law for the time being in force in this behalf.

197. Penalties.—A Gram Panchayat may impose a fine not exceeding one hundred rupees but shall not inflict a sentence of imprisonment, either substantive or in default of payment of fine.

198. Cognizance of suits.—No court shall take cognizance of any case or suit which is cognizable under this Act by a Gram Panchayat established for the area to which the suit relates unless an order has been passed under section 229.

199. Transfer of criminal proceedings to the Gram Panchayat in certain cases.—If, at any stage of the proceedings in a criminal case pending before a magistrate, it appears that the case is triable by a Gram Panchayat, he shall at once transfer the case to that Gram Panchayat which shall try the case *de-novo*.

200. Summary disposal of complaint.—A Gram Panchayat may dismiss any complaint, if after examining the complainant and taking such evidence, as he produces, it is satisfied that the complaint is frivolous, vexatious or untrue.

201. Return of complaint.—If, at any time, it appears to a Gram Panchayat—

- (a) that it has no jurisdiction to try any case before it; or
- (b) that the offence is one for which it cannot award adequate punishment; or
- (c) that the case is of such a nature or complexity that it should be tried by a regular court, it shall return the complaint to the complainant directing him to file it before the magistrate having jurisdiction to try such case.

202. Certain persons not to be tried by the Gram Panchayat.—No Gram Panchayat shall take cognizance of any offence where the accused—

- (a) has been previously convicted of an offence punishable with imprisonment of either description for a term of three years or more; or
- (b) has been previously fined under section 379 of the Indian Penal Code by any Nyaya Panchayat or a Gram Panchayat; or
- (c) has been bound over to be of good behaviour under section 109 or 110 of the Code of Criminal Procedure, 1973; or
- (d) has been previously convicted of gambling; or
- (e) is a Government servant and act complained of is the one done in his official capacity.

45 of 1860

2 of 1974

203. Compensation to the accused.—If a Gram Panchayat is satisfied after enquiry that a case brought before it was false, frivolous or vexatious, it may order the complainant to pay to the accused such compensation not exceeding twenty-five rupees, as it thinks fit.

204. Enquiry in cases forwarded by magistrate.—A magistrate may direct an inquiry to be made under section 202 of the Code of Criminal Procedure 1973 by a Gram Panchayat in any case in which the offence was committed within the territorial jurisdiction of such Gram Panchayat and the Gram Panchayat shall inquire into the case and submit its report to the said magistrate.

2 of 1974

205. Extent of jurisdiction.—The jurisdiction of a Gram Panchayat shall extend to any suit of the following description if its value does not exceed two hundred rupees:—

- (a) a suit for money due on contract other than a contract in respect of immovable property;
- (b) a suit for the recovery of movable property or for the value thereof;
- (c) a suit for compensation for wrongfully taking or injuring a movable property;
- (d) a suit for damages caused by cattle trespass; and
- (e) a suit under clauses (f) and (i) of sub-section (3) of section 58 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

8 of 1974

(2) Notwithstanding anything contained in sub-section (1), the State Government or the prescribed authority may, by notification in the Official Gazette, extend the pecuniary jurisdiction of Gram Panchayat to five hundred rupees in respect of any or all the suits of the description mentioned in sub-section (1).

206. Extension of jurisdiction by agreement of parties.—Parties to a suit may, by a written agreement, refer any suit of the nature mentioned in section 221 to a Gram Panchayat for decision by it and the Gram Panchayat shall, subject to the rules prescribed, determine and dispose of such suit under this Act.

207. Exclusion of Gram Panchayat's jurisdiction.—A Gram Panchayat shall have no jurisdiction to take cognizance of any of the following suits:—

- (a) a suit for a balance of partnership account;
- (b) a suit for a share or part of a share under intestacy or for a legacy or part of legacy under will;
- (c) a suit by or against the State or a public servant for acts done in his official capacity; and
- (d) a suit by or against a minor, or a person of unsound mind.

208. Suit to include the whole claim.—(1) Every suit instituted before a Gram Panchayat shall include the whole of the claim which the plaintiff is entitled to make in respect of the matter in dispute, but he may relinquish any portion of its claim in order to bring it within the jurisdiction of the Gram Panchayat.

(2) If a plaintiff omits to sue in respect of or relinquishes any portion of the claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

209. Limitation.—Every suit instituted before a Gram Panchayat after the period of limitation prescribed therefor in Schedule III shall be dismissed, even though limitation has not been set up as a defence:

30 Provided that in computing the period of limitation prescribed for any suit the time during which the plaintiff has prosecuted with due diligence the suit against the defendant in any court shall be excluded where the suit is founded upon the same cause of action and was prosecuted in good faith in a court which form defect of jurisdiction or any cause of like nature was unable to entertain it.

210. Effect of decision by Gram Panchayat.—The decision of the Gram Panchayat on the question of title, legal character, contract or obligation shall not bind the parties except in respect of the suit in which such matter is decided.

211. Proceeding.—(1) The revenue court concerned shall transfer to the Gram Panchayat, if any, having jurisdiction, all applications under section 46 of the Himachal Pradesh Land Revenue Act, 1953 if the relief required is the restoration of possession to the lawful occupant who is found to have been wrongfully dispossessed of landed property within a period of three months previous to the date of filing the application in the office of the revenue court concerned:

Provided that the revenue court concerned may, for sufficient reasons to be recorded, forward any such application to the Sub-Divisional Officer who shall decide whether the application should or should not be transferred to the Panchayat.

(2) A revenue officer may, in a proceeding under section 46 of the said Act, call for a report from the Panchayat on a question of fact.

212. Procedure in Revenue Proceedings.—In proceedings under the Himachal Pradesh Land Revenue Act, 1953, the Gram Panchayat shall follow the prescribed procedure. 6 of 1954

213. Resjudicata and pending suits.—(1) No Gram Panchayat shall try any suit, proceedings or issue in respect of any matter which is pending for decision, or has been heard or decided by a court of competent jurisdiction in a former suit between the same parties or between the parties under whom they or any of them claim.

(2) Where a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, no Gram Panchayat shall take cognizance of any such offence or on the same facts, of any other offence of which the accused might have been charged or convicted.

214. Concurrent jurisdiction.—Where a case, suit or proceeding is maintainable in more than one Gram Panchayat, the plaintiff or the complainant or the applicant, as the case may be, may bring the case, suit or proceeding in any one of such Gram Panchayats. Any dispute regarding jurisdiction shall be decided by the Sub-Divisional Judge or Sub-Divisional Officer having jurisdiction as the case may be.

215. Institution of suits and cases.—(1) Any person may institute a case or a suit before a Gram Panchayat by an oral or written application to the Pradhan, or in his absence to the Up-Pradhan, of the Gram Panchayat and shall at the same time pay the prescribed fee. The Himachal Pradesh Court Fees Act, 1968 shall not apply to Gram Panchayat except as may be prescribed. 8 of 1968

(2) In every suit the plaintiff shall state its value.

216. Substance of the application recorded in register.—(1) Where a suit or a case is instituted orally, the Pradhan or the Up-Pradhan receiving the application shall record without delay the prescribed particulars and take the signature or thumb impression of the applicant thereon.

(2) The Pradhan or in his absence the Up-Pradhan, as the case may be, shall thereupon, or on a reference by revenue court concerned, appoint a bench of the Gram Panchayat consisting of three Panches and refer the said application to that bench for disposal and shall also fix a date for the first hearing of application before the said bench and give notice of the said date to the applicant and to the Panches thereof:

Provided that no Panch who is a member of the Gram Sabha in the ward for election to the Gram Panchayat in which ward the place of occurrence of the case lies or in which ward the cause of action for the suit arose, as the case may be, shall be included on the bench.

(3) On the date fixed for the first hearing of a suit, case or proceedings, the bench formed under sub-section (2) shall, unless the Pradhan or Up-Pradhan is a member of it, choose one of the Panches to be the Chairman of that bench to conduct the proceedings and shall take up and hear suit, case or proceedings, as the case may be, in the prescribed manner.

(4) For the purposes of judicial functions, a Gram Panchayat shall include a bench thereof.

217. Absence of parties in suits and cases.—(1) If the plaintiff, the complainant or the applicant fails to appear after having been informed of the time and place fixed for hearing, the Gram Panchayat may dismiss the suit, case or proceeding or pass such order as it may deem fit.

(2) The Gram Panchayat may hear and decide the suit or proceeding in the absence of the defendant or opposite party, if the summons have been served upon him or if he has been informed of the time and place fixed for hearing.

218. Gram Panchayat not to revise or alter its decision.—(1) Except as provided in sub-section (2) or to correct a clerical error, a Gram Panchayat shall have no power to cancel, revise or alter any decree or order passed by it.

(2) On an application made within one month of the date of the decree or order or knowledge thereof in case personal service of summons has not been effected, a Gram Panchayat may, for sufficient reasons to be recorded, restore any suit or proceeding which has been dismissed in default or in which a decree or order has been passed *ex-parte*.

219. No legal practitioner to appear.—No legal practitioner shall appear, plead or act, on behalf of any party in any suit, case, proceeding before a Gram Panchayat.

220. Appearance in person or by representative.—Subject to the provisions of section 219 any party to a suit, case or proceeding may appear before a Gram Panchayat either in person or by such servant (not being a tout or a petition writer), partner or relation authorised by him and permitted by the Gram Panchayat to represent him.

221. Special jurisdiction in matters compromised etc.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, a Gram Panchayat may decide any civil or revenue dispute arising in its local area and not pending in any court in accordance with any settlement, compromise or oath agreed upon by the parties and like-wise decide a case if compoundable.

(2) For the removal of doubts, it is hereby declared that a Gram Panchayat shall exercise the power vested in it under sub-section (1) in respect

of such suites, proceedings or cases with reference to which it has power to decide.

222. Procedure and power to ascertain truth.—(1) The Gram Panchayat shall receive such evidence in a suit, case or proceeding as the parties may adduce and may call for such further evidence as, in their opinion, may be necessary for the determination of the points in issue.

(2) The Gram Panchayat may make local investigation in the village to which the dispute relates.

(3) It would be the duty of the Gram Panchayat to ascertain the facts of every suit, case or proceeding before it by every lawful means in its power and thereafter to make such decree, or order with or without costs as it may deem just and legal.

(4) The Gram Panchayat shall follow the procedure prescribed by or under this Act. The Code of Civil Procedure, 1908, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Limitation Act, 1963, shall not apply to any suit, case or proceedings before a Gram Panchayat except as provided in this Act or as may be prescribed.

5 of 1908
1 of 1872
2 of 1974
36 of 1963

223. Majority to prevail.—In the event of any disagreement between the Panches while deciding a criminal case, suit or proceeding, the opinion of the majority shall prevail.

224. Dismissal of suits etc.—(1) A Gram Panchayat may dismiss any suit or proceeding if after examining the plaintiff or the applicant it is satisfied that the suit or proceeding is frivolous, vexatious or untrue.

225. Summons to defendant or accused.—A Gram Panchayat, after an application is made under section 215, shall, unless it has been dismissed or otherwise disposed of under the provisions of this Act, cause summons in the prescribed form to be served in the prescribed manner on the defendant or the accused person or an opposite party requiring him to attend and produce his evidence at such time and place as may be stated in the summons and shall at the same time direct the plaintiff or complainant or the applicant to attend and produce his evidence at such time and place.

226. Failure of the accused to appear.—(1) If the accused fails to appear or cannot be found, the Gram Panchayat shall report the fact to the nearest magistrate.

(2) The magistrate shall issue a warrant for the arrest of the accused and shall direct by endorsement on the warrant that if such person executes a bond with sufficient sureties for his attendance before himself in the manner provided by section 71 of the Code of Criminal Procedure, 1973, he shall be released from custody.

(3) When the accused appears before the magistrate he shall direct him to execute a bond with or without sureties to appear before the Gram Pan-

chayat, Pradhan or Up-Pradhan or any Panch on such date as he may direct and thereafter to continue to appear before the Gram Panchayat as directed by such person or the Gram Panchayat.

(4) On his failure to execute such bond the magistrate shall order that the accused be produced in custody before the person mentioned in sub-section (3) or the Gram Panchayat on such date not more than fifteen days later as he may direct.

(5) If the accused fails to appear before the Gram Panchayat after executing a bond under sub-section (3) the Gram Panchayat shall report the fact to the magistrate before whom the bond was executed, and such magistrate shall proceed in accordance with the provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973.

2 of 1974

227. Issue of summons to witnesses.—A Gram Panchayat may, if it considers the evidence of or the production of a document by, any person necessary in a suit, case or proceeding, issue and cause to be served in the prescribed manner, summons on such person to compel his attendance or to produce or cause the production of such document and such person shall be bound to comply with the direction contained in the summons.

228. Penalties for failing to appear before the Gram Panchayat.—If any person who is summoned by a Gram Panchayat by a written order to appear, to give evidence or to produce any document before it, wilfully disobeys such summons or notice or order, the Gram Panchayat may make a complaint to the magistrate having jurisdiction and the said person shall be punishable with fine which may extend to twenty-five rupees:

Provided that no woman shall be compelled to appear in person before the Gram Panchayat. She may be examined on commission in the manner prescribed :

Provided further that if a document is produced in obedience to a summon issued under this section, the Gram Panchayat shall cause the document to be copied, mark the copy, after comparing with the original, to be true copy and return the original document to the person producing the same.

229. Appeal.—Any person aggrieved by an order or decree of a bench of the Gram Panchayat may appeal within a period of thirty days from the date of such order or decree to the Judicial Magistrate/Sub-Judge in respect of any case or suit, as the case may be, and the Collector concerned in respect of any proceedings under the Himachal Pradesh Land Revenue Act, 1953.

6 of 1954

230. Finality of decree or order of the Gram Panchayat.—A decree or order passed by a Gram Panchayat in any suit, case or proceeding under this Act shall be final subject to the provisions of section 229.

231. Frivolous appeals.—If any application under section 229 is frivolous, the appellant may be fined upto rupees fifty by the Judicial Magistrate, Sub-Judge or Collector concerned, as the case may be.

232. Payment or adjustment of decree to be recorded.—If on the application of the decree-holder or the judgement debtor, the Gram Panchayat

which passed the decree finds after inquiry that the decree has been satisfied wholly or in part, the Gram Panchayat shall record the fact in the prescribed register.

233. Execution of decrees.—(1) A decree or order passed by a Gram Panchayat shall be executed in such manner as may be prescribed. If the defendant's property is situated outside the jurisdiction of the Gram Panchayat passing such order or decree, it may transfer the decree or order for execution in the prescribed manner to the Gram Panchayat within whose jurisdiction the property may be situated and if there be no such Gram Panchayat then to the court of the Sub-Divisional Judge within whose jurisdiction it may be situated.

(2) If a Gram Panchayat finds any difficulty in executing a decree, it may forward the decree to the Sub-Divisional Judge and the Sub-Divisional Judge shall then execute the decree as if it were a decree passed by him.

(3) An order under the Himachal Pradesh Land Revenue Act, 1953, shall, as far as possible, be executed as provided in sub-sections (1) and (2). Sub-section (2) shall be read and construed as if for the words "Sub-Divisional Judge" the words "Collector Concerned" were substituted.

6 of 1954

234. Recovery of fines.—The fine imposed in a case by a Gram Panchayat shall be recoverable in the manner prescribed. If the Gram Panchayat finds any difficulty in its recovery, it may request the Sub-Divisional Judge, within whose jurisdiction the Gram Panchayat lies, to recover it and he shall recover it as if the sentence of fine had been passed by him."

Substitution
of Chapter
XVI.

26. Substitution of Chapter XVI.—For the existing Chapter XVI, and its heading, of the principal Act, the following Chapter XVI and its heading shall be substituted, namely:—

"CHAPTER—XVI

MISCELLANEOUS

235. Protection to Gram Panchayat.—The provisions of the Judicial Officers Protection Act, 1850 shall apply to the members of the Gram Panchayat, in respect of the acts done by it or them in judicial capacity.

18 of 1850

236. Duty of police towards Gram Panchayats.—Every police officer shall give immediate information in the prescribed manner to the Gram Panchayat of an offence coming to his knowledge which has been committed within the jurisdiction of the Gram Panchayat and is triable by the Gram Panchayat and shall assist all Panches and servants of the Gram Panchayat in the exercise of their lawful authority.

237. Power of the State Government to make rules.—(1) The State Government may, subject to the condition of previous publication by notification in the Official Gazette, make rules consistent with this Act for carrying out the judicial functions of Gram Panchayats.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the records and registers that shall be maintained by Gram Panchayat in discharge of judicial functions and the form in which they are to be maintained;

- (ii) the returns to be submitted by Gram Panchayat in the form in which they are to be, the authorities to which and the time when they shall be submitted ;
- (iii) the issue, service or execution of summons, notices and other processes of Gram Panchayat ;
- (iv) the transfer by a Gram Panchayat of summons and other processes to another Gram Panchayat or any court for service or execution ;
- (v) the fees to be levied by Gram Panchayat for institution of such suits and cases, for issue of processes, for obtaining copies of documents and other matters ;
- (vi) the manner in which the bench of Panches is to conduct the proceedings or to take up and hear the suit, case or proceedings ;
- (vii) the procedure for execution of a decree, order and a sentence passed by a Gram Panchayat ;
- (viii) generally for the guidance of Gram Panchayats, servants of the Gram Panchayats and other authorities in any matter connected with the carrying out of the provisions of this Act in relation to the judicial functions of Gram Panchayats.

238. *Proceeds of fees and fines etc.*—All sums realised by way of court fees in any case, suit or proceeding or by way of fine in cases tried and disposed of by a Gram Panchayat shall be handed over by the State Government to the Gram Panchayat in the prescribed manner.

239. *Conviction by Gram Panchayat not to be a previous conviction.*—No conviction by a Gram Panchayat shall be deemed to be previous conviction for the purposes of section 75 of the Indian Penal Code, 1860 or section 356 or 360 of Code of Criminal Procedure, 1973.

240. *Saving of existing Gram Sabhas etc.*—Notwithstanding the repeal of any of the Acts under section 2:—

- (a) all Gram Sabhas, Gram Panchayats, Nyaya Panchayats and Panchayat Samitis constituted and functioning immediately before the commencement of this Act, shall be deemed to be Gram Sabhas, Gram Panchayats, Nyaya Panchayats and Panchayat Samitis constituted and functioning under the provisions of this Act ;
- (b) anything done or any action taken including the Gram Sabhas, Gram Panchayats, Nyaya Panchayats and Panchayat Samitis constituted, limits defined, appointments, rules, regulations, bye-laws and orders made, notifications and notices issued, taxes, tolls, rates, fees imposed or assessed, contracts entered into, permissions and licences granted, and suits instituted under any Act repealed under section 2, or any enactment thereby repealed, shall, so far as may be, be deemed, unless the State Government directs otherwise, to have been respectively done or taken, constituted, defined, made, issued, imposed or assessed, entered into, granted, and instituted under the corresponding provisions of this Act ;
- (c) any reference made in any law for the time being in force, to any Act repealed under section 2, shall be construed as reference to this Act ; and

- (d) the members elected or appointed to any Gram Panchayat, Nyaya Panchayat or Panchayat Samiti under any of the repealed Acts, shall continue to hold office till the expiry of their present term of office.

241. Validation of action of Gram Panchayats and Nyaya Panchayats established under repealed Acts.—Notwithstanding anything contained in sections 2 and 240 of this Act, the Gram Panchayats established in the Districts of Kangra, Kulu, Simla and Lahaul and Spiti under the Punjab Gram Panchayat Act, 1952 shall continue and be deemed to have always continued to discharge judicial functions under that Act, and in accordance with the rules framed thereunder; and the members of the Nyaya Panchayats established in the Districts of Mahasu, Sirmur, Kinnaur, Mandi, Bilaspur and Chamba, under the Himachal Pradesh Panchayati Raj Act, 1952, shall continue and be deemed to have always continued to hold office.

4 of 1953

6 of 1953

242. Abolition of Nyaya Panchayats and transfer of cases, suits, proceedings and appeals.—(1) After the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977, all the Nyaya Panchayats constituted under this Act shall cease to exist.

(2) All cases, suits and proceedings pending in the Nyaya Panchayats at the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977 shall stand transferred to the Gram Panchayats having jurisdiction to try and hear such cases, suits and proceedings who shall dispose of the same in accordance with the provisions of this Act.

(3) All appeals pending in the Nyaya Panchayats at the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977 shall be transferred to the Judicial Magistrate, Sub-Judge or the Collector concerned, as the case may be.

Amendment
of SCHE-
DULE I.

27. In Schedule I to the principal Act, the following amendments shall be made, namely:—

- (a) in the heading the words “NYAYA PANCHES OF NYAYA PANCHAYAT” shall be omitted; and
- (b) the sign “/” and the words “Nyaya Panch of Nyaya Panchayat” shall be omitted.

Amendment
of SCHE-
DULE II.

28. In Schedule II of the principal Act, the following amendments shall be made namely:—

- (a) for the brackets, words, and figures “(See section 203)” the brackets, words and “[figures See section 196 (1)]” shall be substituted ;
- (b) for the words “NYAYA PANCHAYAT” the words “GRAM PANCHAYAT” shall be substituted.

Amendment
of SCHE-
DULE III.

29. In Schedule III of the principal Act, for the brackets, words and figures “(See section 217)” the brackets, words and figures “(See section 209)” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

According to the existing provisions contained in section 9 (1) of the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970), the number of members of Gram Panchayat ranges from 7 to 15 determined on the basis of population. The number of members is very high and is proposed to be between 7 and 11 depending on the population. According to the existing provision contained in section 9 (2) the Pradhan and Up-Pradhan of Gram Panchayat are elected by the members of the Panchayat from amongst themselves. The Pradhan and Up-Pradhan of Gram Panchayat are also Pradhan and Up-Pradhan of the Gram Sabha and, therefore, in order to ensure that they enjoy the confidence of the Gram Sabha, it is felt that they should be elected by the Gram Sabha and not by the Panches of Gram Panchayat. There is a provision in the Representation of the Peoples Act, 1951 that a person convicted of an offence punishable under the Protection of Civil Rights Act, 1955 shall be disqualified to contest elections to Parliament and State Legislatures for a period of six years. Similar provision is proposed to be made in section 9 (5) of the Act.

The term of office of all the Panchayati Raj bodies is five years and Government have no power to hold elections before the Panchayati Raj bodies complete their prescribed term. Necessity may arise to hold elections to the Panchayati Raj bodies before they complete their prescribed term and Government should be vested with the power to hold general elections to the Panchayati Raj bodies in the public interest before they complete their prescribed term.

Under the existing provision of section 63 (b) (iii) two persons are co-opted in the Panchayat Samiti out of a panel nominated by the managing committees of the co-operative societies within the jurisdiction of the Panchayat Samiti. The representatives of the co-operative societies should be elected by the members of the co-operative societies within the jurisdiction of the Panchayat Samiti and the members so elected should become the members of the Panchayat Samiti.

According to the existing provision of the Act, a person who ceases to be a Panch continues to be a member of the Panchayat Samiti. In order to ensure that a member of the Panchayat Samiti ceases to be as such, when he ceases to be a Panch, section 73 is proposed to be amended.

Under the existing provisions of the Act, Zila Parishads are advisory bodies. With a view to make this public representative body effective in the three tier system of Panchayati Raj, it is felt necessary to give executive, administrative and financial powers to Zila Parishads and to make them corporate bodies.

The existing Act provides for the establishment of Naya Panchayats for the discharge of judicial functions. These functions are proposed to be entrusted to the Gram Panchayats and Nyaya Panchayats are proposed to be dispensed with.

This Bill seeks to amend the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970) accordingly.

SHYAMA SHARMA,
Minister-in-charge.

SIMLA :
The 27th December, 1977.

FINANCIAL MEMORANDUM

Clause 14 of the Bill inserts section **147-B** which provides for the allocation of State Government funds to Zila Parishads and such share of the land cess and State taxes as may be prescribed. As such some expenditure has to be incurred for making contributions to the Zila Parishad fund. This recurring expenditure from the State exchequer cannot be exactly worked out at this stage.

MEMORANDUM ON DELEGATED LEGISLATION

Clause 3 empowers the Government to prescribe the manner for the election of Pradhan, Up-Pradhan and members of Gram Panchayats. Clause 6 empowers the Government to prescribe the manner for the election of primary members of the Panchayat Samiti. Clause 13 of the Bill empowers the Government to prescribe the purposes for which Zila Parishad fund can be applied, to prescribe the share of land cess, State taxes or fees for Zila Parishad fund and to prescribe the date when the budget of Zila Parishad shall be placed before the Zila Parishad. Clause 21 of the Bill empowers the Government to prescribe the period within which a servant of Panchayat Samiti or Zila Parishad or a Government Servant placed at their disposal aggrieved by an order of the Panchayat Samiti or Zila Parishad can perfer an appeal. Clause 24 of the Bill empowers the Government to prescribe the manner for the disposal of revenue proceedings. This clause also empowers the Government to frame rules for the disposal of suits and cases by the Gram Panchayats and to prescribe fee to be charged for such suits and cases. It also empowers the Government to prescribe the manner for the service of summons issued by the Gram Panchayats, for the execution of the decrees or orders passed by the Gram Panchayats and for the recovery of fine. Clause 25 of the Bill empowers the Government to prescribe the manner in which the police officer shall give immediate information to the Gram Panchayat of an offence, coming to his knowledge, which has been committed within the jurisdiction of the Gram Panchayat and is triable by the Gram Panchayat. This clause further empowers the Government to prescribe the manner in which the State Government shall hand over all the sums, realized by way of court fees or fines in cases, suits or proceedings tried or disposed of by Gram Panchayats, to the Gram Panchayats. This delegation is essential and normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Panchayat Department File No. PCH. H. A. (4)-42/76]

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Panchayati Raj (Amendment) Bill, 1977, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.